

## **AMENDMENTS TO THE DRAWINGS**

Five sheets of replacement drawings for figures 1-4 are attached. In addition, five sheets of drawings are attached for the Examiner's convenience. Figures 1-4 have been amended to illustrate the door spring 17 as set forth in original claims 3, 8-9 and 13-14.

### **REMARKS**

This amendment is in response to the office action dated March 18, 2005. In the office action, the drawings were objected to, and claims 1-15 were rejected. A detailed discussion of each item in the office action follows.

### **THE DRAWINGS**

In item 1 of the office action, the drawings were objected to. Drawings 1-4 have been amended to show spring 17 as required by the Examiner.

### **THE OBJECTION TO CLAIM 3**

In item 2 of the office action, claim 3 was objected to. Claim 3 is canceled. Therefore, this basis of rejection is moot.

### **THE 112 REJECTION**

In items 3-4 of the office action, claims 1-15 were rejected under 35 USC 112, first paragraph. Independent claim 1 was amended in response to the Examiner's comments, as follows:

In regard to the issue of the pick, that element is removed from the claims to eliminate any potential ambiguity. The specification states that the locking arm guides the pick away, and

the abstract states that the door guides the pick away. Both are correct for this reason. A legitimate detacher arm is a rigid structure which always follows the same path. A typical pick used by a shoplifter is a flimsy device, such as a wire or bent paperclip, which may bend in unpredictable directions. The pick may enter the anti-theft tag and be diverted into the dead end channel. Likewise, it may also be bent such that it slides along a portion of the wall between the detacher arm entry area and the detacher arm chamber. When that happens, the button door diverts the pick away from detacher arm chamber. In any event, that element was eliminated from claim 1 to remove it as an issue.

Regarding the detacher arm and the door, claim 1 was amended to more clearly state that the detacher arm engages the door.

On page 4 of the office action, claims 6 and 11 were amended to provide antecedent basis for the "the lock." The term "anti-tag" was amended to read "anti-theft tag." The phrase "in a detacher arm" was amended to read "within a detacher arm."

Applicant's Attorney believes that based on the amendment to the claims, this basis of rejection has been overcome, and respectfully requested the Examiner to reconsider the claims with a view toward allowance..

### **THE 102 REJECTION**

On page 4 of the office action, claim 1 was rejected under 35 U.S.C. 102, as being anticipated by Hogan. Hogan does not anticipate Applicant's invention for the following reasons:

1. Hogan is not known for or capable of performing the function of this invention, nor does it teach the disclosure of this invention.

2. Hogan does not disclose the purpose, means or mechanism that this invention discloses.
3. Hogan does not solve the problems that this invention solves.
4. Hogan does not disclose each and every element of this invention.
1. **Hogan is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.**

There is not anticipation by a prior patent not known or recognized as being capable of performing the function of the patented device, but rather the prior patent must itself do the teaching. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (1984); Edstrom-Carson & Co. v. Onsrud Machine Works, Inc., 129 U.S.P.Q. 457.

Hogan is not capable of functioning the same as this invention because:

Hogan uses a spring gate which only allows a detacher arm with a specific shape to unlock the anti-theft tag. Applicant's invention does not rely on any specific shape for the detacher arm. Instead, it isolates the detacher arm chamber from the detacher arm entry path by closing a door between those two areas of the anti-theft tag.

Independent claim 1 was amended to more specifically define this difference. The button door in Applicant's invention does not appear in Hogan. Nor does Hogan seal off the detacher arm chamber from the detacher arm entry path.

Applicant has amended claim 1 to more clearly define this difference over Hogan.

2. **Hogan does not disclose the purpose, means or mechanism that this invention discloses.**

There is no anticipation where a reference does not disclose the purpose, means and mechanism for accomplishing the instant invention but rather is restricted to a limited and different means: Sperry Products, Inc. v. Aluminum Company of America, 120 U.S.P.Q. 362.

The goals or objects of Applicant's invention, without limitation, are to isolate the detacher arm chamber from the detacher arm path for the purpose of thwarting attempts to pick the anti-theft tag. Applicant does this by isolating the detacher arm chamber with a spring loaded door.

Hogan does not provide a door mechanism to isolate the detacher arm chamber.

3. **Hogan does not solve the problems that this invention solves.**

There is no anticipation if a prior patent does not solve the problem(s) which the subsequent patent successfully solves. Technical Development Corporation v. Servo Corporation of America, 125 U.S.P.Q. 133.

Applicant solves the problem of anti-theft locks being picked by bent picks which are inserted into the anti-theft tag. Applicant prevents theft by diverting the pick. Hogan is designed to allow particular detacher arms to enter, but will not stop wire picks from entering..

4. **Hogan does not disclose each and every element of this invention.**

There is no anticipation if the reference does not disclose each and every element of the claimed invention. SSIH Equipment S.A. v. United States International Trade Commission, 718 F.2d 365, 218 U.S.P.Q. 678 (1983).

Hogan does not disclose a door to seal the detacher arm assembly from the detacher arm entry path. Without the door, a wire pick may enter the detacher arm chamber and pick the anti-theft tag. Further, Applicant uses the door to unlock the anti-theft tag. Hogan has no such door.

For all the reasons set forth above, Applicant's invention is not anticipated by Hogan. Applicant Attorney believes that based on the amendment to the claims, this basis of rejection has been overcome and respectfully requests the Examiner to reconsider the claims with a view toward allowance.

### **THE 103 REJECTION**

On page 5 of the office action, claim 1 was rejected under 35 U.S.C. 103, as being obvious in light of Nguyen/Sayegh/Yamamoto. Applicant is responding to this basis of rejection as follows:

The Section 103 objection only applies:

. . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Applicant's invention is not obvious and thereby unpatentable in view of Nguyen/Sayegh/Yamamoto for the following reasons:

- 1. The reference cited does not make obvious Applicant's invention as a whole.**

The obviousness inquiry is not whether each element can be found in the prior art, but whether the prior art made obvious the invention as a whole. Grain Processing Corp. v. American Maize-Products, 840 F.2d 902, 5 U.S.P.Q.2d 1788 (Fed. Cir. 1988); Hartness Int'l. Inc. v Simplimatic Eng. Co., 819 F.2d 1100, 1108, 2 U.S.P.Q. 1826, 1832 (Fed.Cir. 1987); and ACA Hosp.Sys. Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

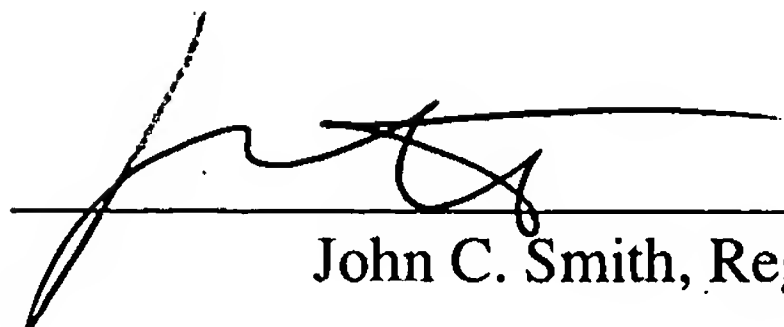
Nguyen/Sayegh/Yamamoto specifically teaches a device that use shields to prevent insertion if pick through the body of the anti-theft tag.. For example, the shield 108 in Nguyen is used located on the opposite side of the tag from the detacher arm entry channel. It is a hardened metal shield designed to prevent forced entry. In contrast, Applicant's invention is designed to conceal the opening to the detacher arm chamber and divert picks away from it. These are two wholly different problems with whollt different solutions. Nguyen/Sayegh/Yamamoto does not address the problem which Applicant's invention addresses. Further, it does not teach or suggest a solution to the problem which Applicant's invention solves.

## **CONCLUSION**

Applicant's Attorney thanks the Examiner for the Examiner's help in prosecuting this invention. In response to the office action, Applicant's Attorney has amended the drawings, canceled claim 3, and amended claims 1 and 4-6, 10-11 and 15. A petition and fee for a three month extension of time is attached. In addition, a request for continued examination is attached to ensure that any features in the amended claims which may need to be searched can be. Applicant's Attorney has been careful to avoid the introduction of new matter. In addition, a separate petition and fee for a three month extension of time is attached. Applicant's Attorney believes that all items in the office action dated March 18, 2005 have been addressed, and respectfully requests the Examiner to reconsider the claims, as amended, with a view towards allowance. Applicant's Attorney further invites the Examiner to contact Applicant's Attorney for

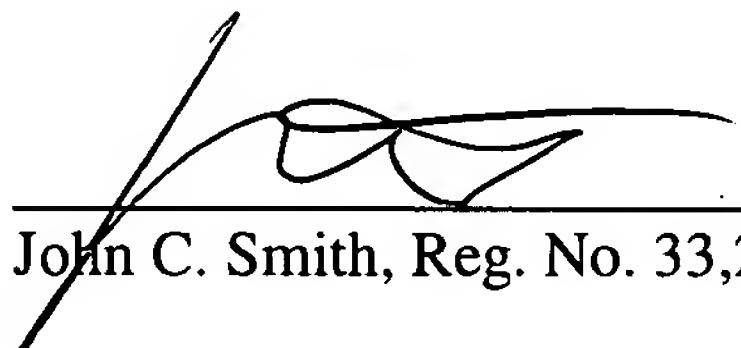
a telephonic interview at the below listed number if the Examiner believes that prosecution of the application can be furthered by so doing.

Respectfully submitted,

By:   
John C. Smith, Reg. No. 33,284

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on: September 19, 2005  
Date of Deposit

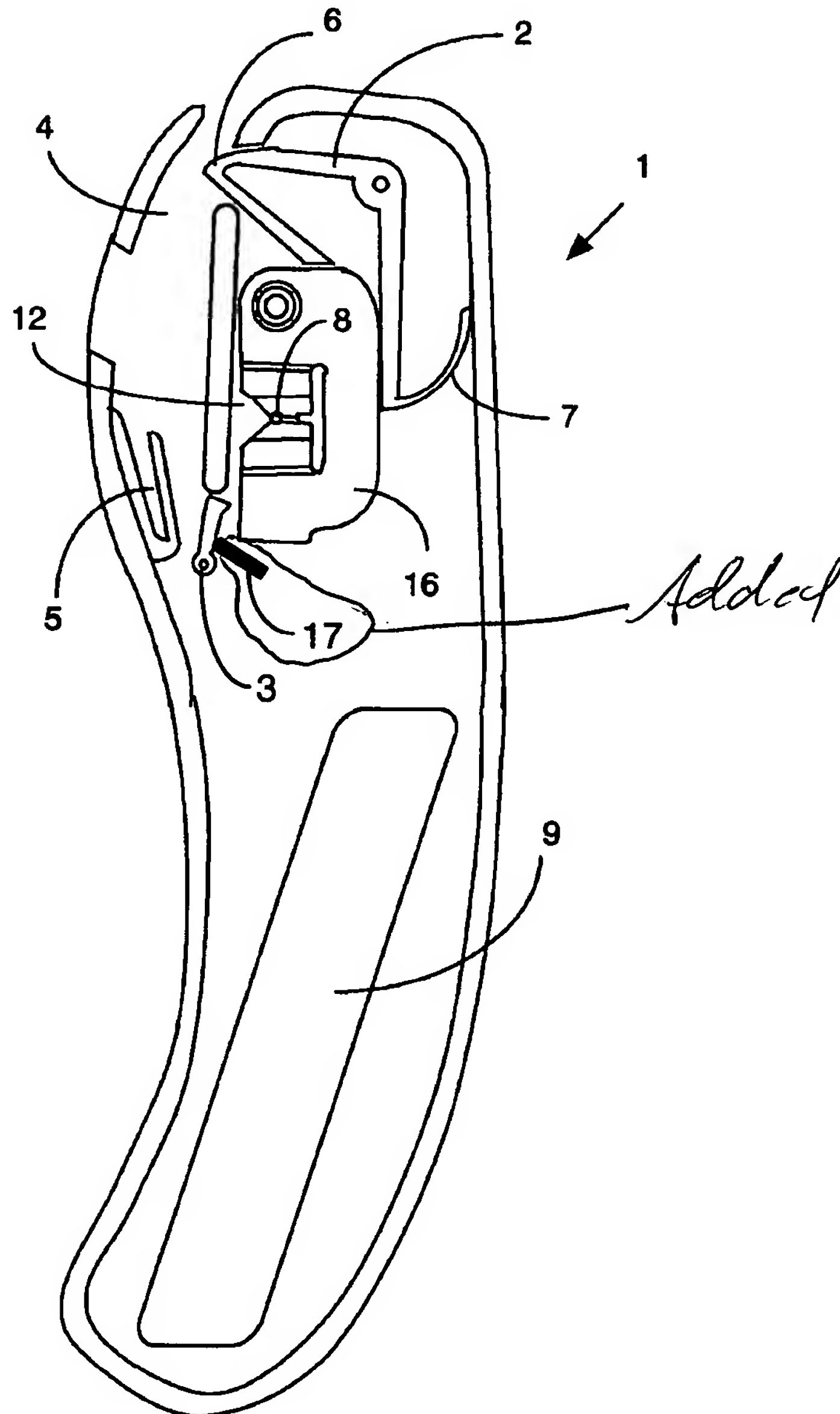
  
John C. Smith, Reg. No. 33,284

September 19, 2005  
Signature Date



Replacement Sheet - Application Serial Number 10/708,484

Figure 1





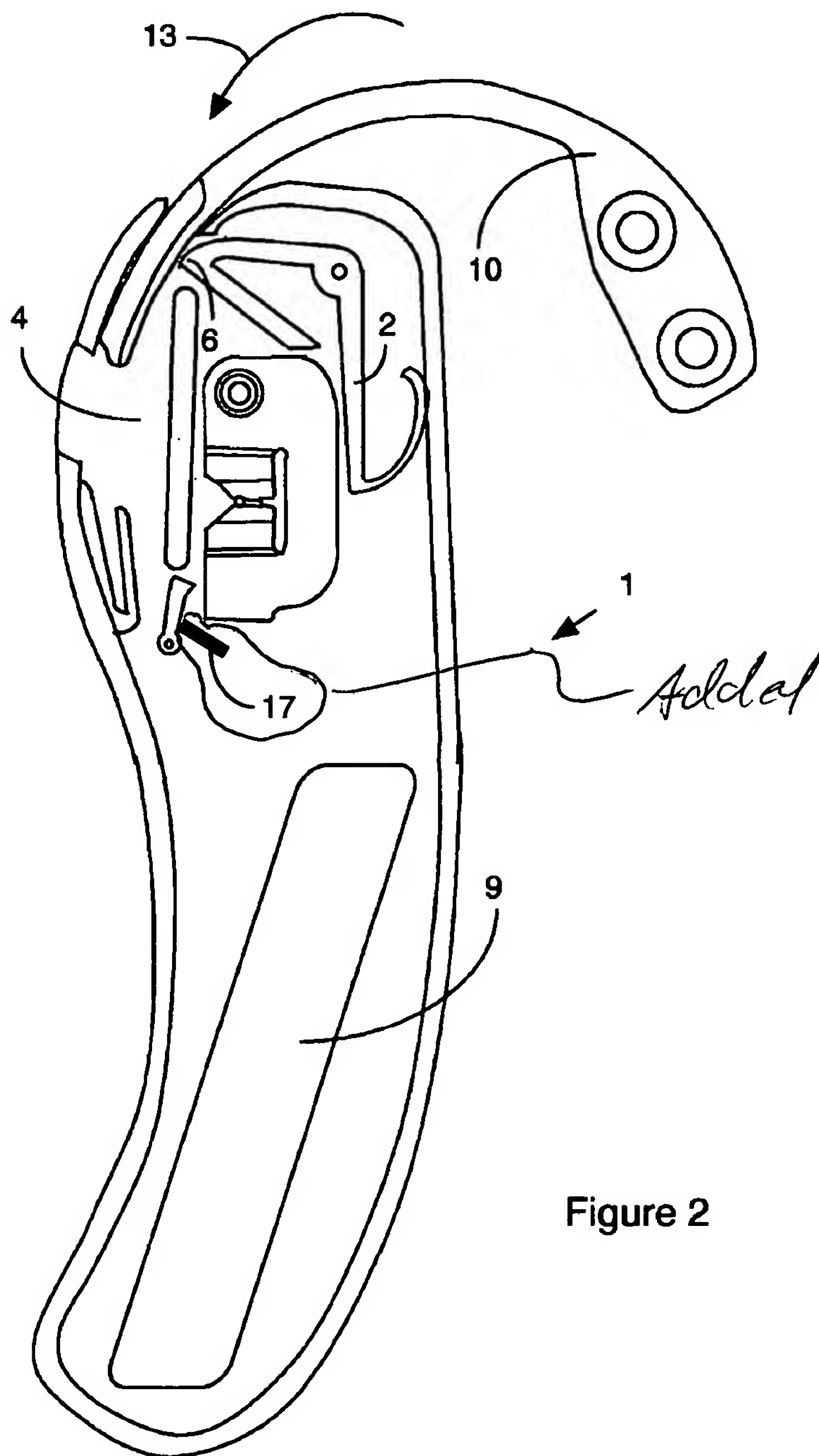


Figure 2



Figure 3B

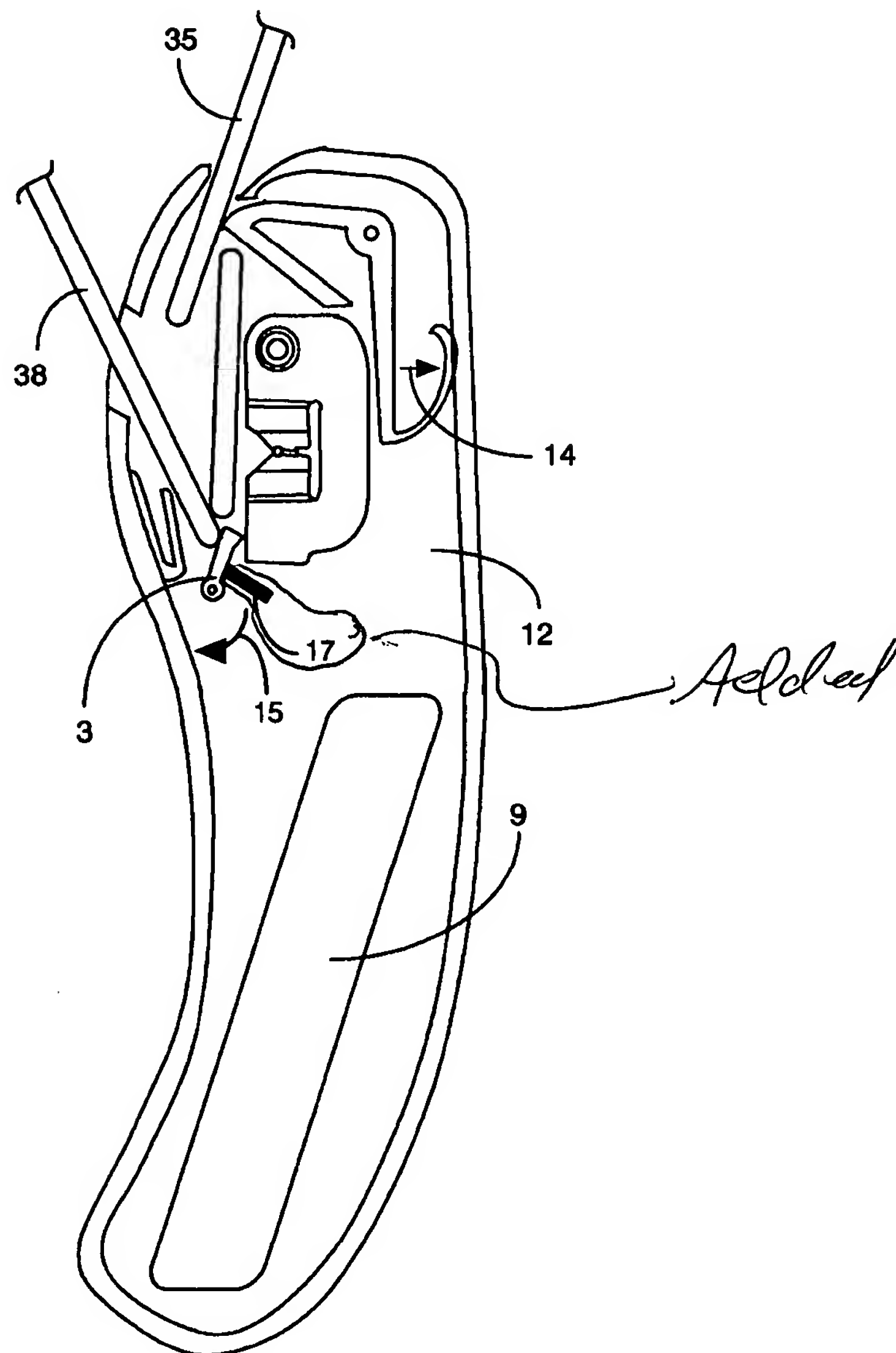


Figure 4

